IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8009 OF 2005

Princess Maheshwari Devi ..Petitioner

Vs.

Shatrunjay Real Estate Developers ..Respondent

Mr. Kevic Setalvad with Mr. N.S. Das for petitioner.
Ms. Deepa Chavan i/by ALMT Legal for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2007.

P.C.:

1. Rule. By consent the Rule heard forthwith.

Heard Mr. Setalvad with Mr. Das the learned counsel for the petitioner and Ms. Deepa Chavan appears for respondent.

2. Mr. Setalvad in his arguments pointed out that notwithstanding the powers to entertain an application for review under Order 47 Rule 1 of C.P.C., in the instant case the learned Judge of the Trial Court virtually sat in appeal over the order passed by his learned Predecessor below Exh.21 on

31/3/2003. The record shows that the Review Petition (Exh.24) was submitted on 24/4/2003 and it came to be allowed on 1/1/2004 by the subsequent Presiding Officer. The petitioner had challenged the said order in Revision Application No.14 of 2004 before the District Court at Pune and the learned Additonal District Judge at Pune dismissed the same on 1/7/2005, thereby upholding the order passed below Exh.24, the review petition.

3. I agree with the submissions made by Mr.Setalvad and the order passed by the trial court below Exh.24 has gone into the merits of the order under review and passed below Exh.21 which was an application for amendment of the plaint. The Division Bench of the Small Causes Court fell in gross errors in law in upholding that the review application was rightly allowed. As is well settled, the powers under Order 47 Rule 1 of C.P.C. are very limited while entertaining review petition and such petition cannot go into the merits of the order under review. The review powers could be exercised only for correction of an error apparent on the face of the record. In the instant case, though the respondent-plaintiff

might be justified in taking out an amendment application on the basis of the subsequent developments, the right course available to the plaintiff was to challenge the order passed below Exh.21 rather than filing a review petition at Exh.24 under Order 47 Rule 1 of C.P.C.

4. Hence, this petition succeeds and the same is hereby allowed. The impugned order passed by the Division Bench is hereby quashed and set aside and the application at Exh.24 filed before the trial court under Order 47 Rule 1 of C.P.C. stands dismissed. However, this order will not come in the way of the plaintiff to challenge the order passed rejecting the amendment application at Exh.21 before the appropriate court. All rights and contentions of the parties are left open.

5. Rule made absolute accordingly. No costs.

(B.H. Marlapalle,J.)